

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BALTIMORE DIVISION

JASON ALFORD, DANIEL LOPER, WILLIS
MCGAHEE, MICHAEL MCKENZIE, JAMIZE
OLAWALE, ALEX PARSONS, ERIC SMITH,
CHARLES SIMS, JOEY THOMAS, and LANCE
ZENO, Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

THE NFL PLAYER DISABILITY & SURVIVOR
BENEFIT PLAN; THE NFL PLAYER
DISABILITY & NEUROCOGNITIVE BENEFIT
PLAN; THE BERT BELL/PETE ROZELLE NFL
PLAYER RETIREMENT PLAN; THE
DISABILITY BOARD OF THE NFL PLAYER
DISABILITY & NEUROCOGNITIVE BENEFIT
PLAN; LARRY FERAZANI; JACOB FRANK;
BELINDA LERNER; SAM MCCULLUM;
ROBERT SMITH; HOBY BRENNER; and
ROGER GOODELL,

Defendants.

Case No. 1:23-cv-00358-JRR

**DECLARATION OF BENJAMIN R. BARNETT IN SUPPORT
OF PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

BENJAMIN R. BARNETT declares the following pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Seeger Weiss LLP and am admitted to practice in the State of Maryland, the Commonwealth of Pennsylvania, and the District of Columbia, and I am also admitted to this Court. I make this Declaration in support of Plaintiffs' motion to compel discovery, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure and Rule 104.8 of the Local Rules of this Court. I have personal knowledge of the matters set forth herein based on my

role as counsel of record and on my review of the case file of my firm and other files.

2. Annexed hereto as **Exhibit A** is a copy of the March 10, 2023 decision letter sent to Plaintiff Jason Alford (Bates-numbered NFL_ALFORD-0000918-23).

3. Annexed hereto as **Exhibit B** is a copy of a Physician Report Form and accompanying “Neutral Neuropsychological Evaluation,” dated April 7, 2021, completed by Douglas B. Cooper, Ph.D., concerning his evaluation of Plaintiff Charles Sims (Bates-numbered NFL_ALFORD-0009957-68).

4. Annexed hereto as **Exhibit C** is a copy of the Neuropsychological Evaluation of Plaintiff Joey Thomas, completed by Francisco I. Perez, Ph.D., and dated October 24, 2019 (Bates-numbered NFL_ALFORD-0011448-71).

5. Annexed hereto collectively as **Exhibit D** are copies of decision letters sent to Plaintiffs Jamize Olawale, Michael McKenzie, Charles Sims, and Eric Smith (Bates-numbered NFL_ALFORD-0009846-63; NFL_ALFORD-0008983-91; NFL_ALFORD-0004684-90; NFL_ALFORD-0010258-62; NFL_ALFORD-0010283-88; NFL_ALFORD-0010769-79).

6. Annexed hereto as **Exhibit E** is a copy of the Board’s November 22, 2019 decision letter sent to Plaintiff Michael McKenzie (Bates-numbered NFL_ALFORD-0004684-90).

7. Annexed hereto as **Exhibit F** is a copy of the Board’s November 22, 2019 decision letter sent to Plaintiff Eric Smith (Bates-numbered NFL_ALFORD-0011212-21).

8. Annexed hereto as **Exhibit G** is a copy of the Services Agreement Between the NFL Player Supplemental Disability & Neurocognitive Benefit Plan and Dr. William Garmoe, dated June 26, 2013 (Bates-numbered NFL_ALFORD-0012311-18).

9. In opposing Plaintiffs’ motion for class certification and in support of two of their motions for summary judgment (as to Plaintiffs Daniel Loper and Jamize Olawale), Defendants

have submitted the declaration of a putative statistical expert, who relies on data concerning Plan-hired physicians' evaluation of disability benefits claimants over a 78-month period (January 1, 2018-July 31, 2024) that Defendants provided to him from their V3 database. *See* ECF No. 111-2 at 6, 49-63 (Decl. of David B. Lasater, Ph.D., ¶¶ 11-13 & App. 3). One of Defendants' summary judgment motion declarants, Hessam ("Sam") Vincent—the Plan's Disability Relations Manager, responsible for managing the Plan's relationship with its hired physicians—characterizes the V3 database as Defendants' "system of record" for tracking claims and appeals, including the physicians assigned to evaluate benefits claimants. ECF Nos. 115-4 at 3, 13 (¶¶ 5-7, 42), 123-3 at 3, 14 (¶¶ 5-7, 43).

10. The V3 database was not fully or fairly disclosed to Plaintiffs during the parties' Federal Rule of Civil Procedure 26(f) and meet-and-confer discussions. The "anonymized physician data" from this database that Defendants' putative statistical expert relies upon were produced to Plaintiffs electronically at approximately 11:27 p.m. on November 18, 2024, about one minute before Defendants filed their class certification opposition papers at approximately 11:28 p.m. that night. Defendants both failed to meet and confer with Plaintiffs before producing data from the V3 database, as mandated by the parties' negotiated ESI Protocol, and to produce the data in a reasonably usable format. *See* ECF No. 110 at 8, 10 (§§ 11.a, 11.g).

11. Under penalty of perjury, I declare the foregoing to be true and correct.

Executed this 26th day of November, 2024

s/ Benjamin R. Barnett
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